

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF WASHINGTON

WILLIAM R. CAMPBELL	)	
	)	No. CV-10-0252-CI
Plaintiff,	)	
	)	ORDER DENYING PLAINTIFF'S
v.	)	MOTION FOR SUMMARY JUDGMENT
	)	AND GRANTING DEFENDANT'S
MICHAEL J. ASTRUE, Commissioner	)	MOTION FOR SUMMARY JUDGMENT
of Social Security,	)	
	)	
Defendant.	)	
	)	

BEFORE THE COURT are cross-Motions for Summary Judgment. (ECF No. 10, 12.) Attorney Maureen J. Rosette represents William R. Campbell (Plaintiff); Special Assistant United States Attorney Gerald J. Hill represents the Commissioner of Social Security (Defendant). The parties have consented to proceed before a magistrate judge. (ECF No. 4.) After reviewing the administrative record and briefs filed by the parties, the court **DENIES** Plaintiff's Motion for Summary Judgment, and directs entry of judgment for Defendant.

**JURISDICTION**

Plaintiff filed for disability insurance benefits (DIB) under Title II of the Social Security Act (Act), 42 U.S.C. § 401-34, on September 18, 2007. (Tr. 141.) He alleged disability due to post traumatic stress disorder (PTSD) with an onset date of January 1, 1968. (Tr. 145.) His claim was denied initially and on reconsideration. Plaintiff requested a hearing before an administrative law judge (ALJ), which was held on May 6, 2009,

1 before ALJ R. S. Chester. (Tr. 25-52.) Plaintiff, who was  
2 represented by counsel, testified. The ALJ denied benefits on May  
3 28, 2009, and the Appeals Council denied review. (Tr. 13-24, 1-5.)  
4 The instant matter is before this court pursuant to 42 U.S.C. §  
5 405(g).

#### 6 **STATEMENT OF THE CASE**

7 The facts of the case are set forth in detail in the transcript  
8 of proceedings, and are briefly summarized here. At the time of the  
9 hearing, Plaintiff was 65 years old, and was married with two adult  
10 children. (Tr. 31.) He has a high-school education, a Bachelor's  
11 degree in photography and a Master's degree in spirituality.  
12 Plaintiff served in the Navy for four years from 1964-1968, during  
13 which he served in Vietnam. (Tr. 31-33.) Plaintiff has past work  
14 experience as a self-employed photographer, administrative  
15 assistant, in home care-giver and Hospice volunteer. (Tr. 146.) He  
16 stated he has been unable to sustain work since 1968 because he  
17 cannot finish tasks and cannot keep jobs. (Tr. 145.)

#### 18 **ADMINISTRATIVE DECISION**

19 ALJ Chester first found Plaintiff met the insured status  
20 requirements for DIB and was insured through June 30, 1977. (Tr.  
21 18.) At step one of the sequential evaluation process, the ALJ  
22 found Plaintiff had worked since the alleged onset date of January  
23 1, 1968, but not to the level of substantial gainful activity prior  
24 to his date of last insured. (Id.) At step two, the ALJ found  
25 "Through the date of last insured, there were no medical signs or  
26 laboratory findings to substantiate the existence of a medically  
27 determinable impairment." (Tr. 18-19.) The ALJ concluded because  
28

1 there was no medical evidence of impairment, Plaintiff was not under  
2 a disability, as defined by the Social Security Act, during the  
3 claimed period. (Tr. 20.)

#### 4 STANDARD OF REVIEW

5 In *Edlund v. Massanari*, 253 F.3d 1152, 1156 (9<sup>th</sup> Cir. 2001), the  
6 court set out the standard of review:

7 A district court's order upholding the Commissioner's  
8 denial of benefits is reviewed *de novo*. *Harman v. Apfel*,  
9 211 F.3d 1172, 1174 (9th Cir. 2000). The decision of the  
10 Commissioner may be reversed only if it is not supported  
11 by substantial evidence or if it is based on legal error.  
12 *Tackett v. Apfel*, 180 F.3d 1094, 1097 (9th Cir. 1999).  
13 Substantial evidence is defined as being more than a mere  
14 scintilla, but less than a preponderance. *Id.* at 1098.  
15 Put another way, substantial evidence is such relevant  
16 evidence as a reasonable mind might accept as adequate to  
17 support a conclusion. *Richardson v. Perales*, 402 U.S.  
18 389, 401 (1971). If the evidence is susceptible to more  
19 than one rational interpretation, the court may not  
20 substitute its judgment for that of the Commissioner.  
21 *Tackett*, 180 F.3d at 1097; *Morgan v. Commissioner of*  
22 *Social Sec. Admin.*, 169 F.3d 595, 599 (9th Cir. 1999).

23 The ALJ is responsible for determining credibility,  
24 resolving conflicts in medical testimony, and resolving  
25 ambiguities. *Andrews v. Shalala*, 53 F.3d 1035, 1039 (9th  
26 Cir. 1995). The ALJ's determinations of law are reviewed  
27 *de novo*, although deference is owed to a reasonable  
28 construction of the applicable statutes. *McNatt v. Apfel*,  
29 201 F.3d 1084, 1087 (9th Cir. 2000).

30 It is the role of the trier of fact, not this court, to resolve  
31 conflicts in evidence. *Richardson*, 402 U.S. at 400. If evidence  
32 supports more than one rational interpretation, the court may not  
33 substitute its judgment for that of the Commissioner. *Tackett*, 180  
34 F.3d at 1097; *Allen v. Heckler*, 749 F.2d 577, 579 (9<sup>th</sup> Cir. 1984).  
35 Nevertheless, a decision supported by substantial evidence will  
36 still be set aside if the proper legal standards were not applied in  
37 weighing the evidence and making the decision. *Browner v. Secretary*

1 of Health and Human Services, 839 F.2d 432, 433 (9<sup>th</sup> Cir. 1988). If  
2 there is substantial evidence to support the administrative  
3 findings, or if there is conflicting evidence that will support a  
4 finding of either disability or non-disability, the finding of the  
5 Commissioner is conclusive. *Sprague v. Bowen*, 812 F.2d 1226, 1229-  
6 1230 (9<sup>th</sup> Cir. 1987).

#### 7 SEQUENTIAL EVALUATION PROCESS

8 Also in *Edlund*, 253 F.3d at 1156-1157, the court set out the  
9 requirements necessary to establish disability:

10 In evaluating whether a claimant suffers from a  
11 disability, an ALJ must apply a five-step sequential  
12 inquiry addressing both components of the definition,  
13 until a question is answered affirmatively or negatively  
14 in such a way that an ultimate determination can be made.  
20 C.F.R. §§ 404.1520(a)-(f), 416.920(a)-(f). "The  
claimant bears the burden of proving that [s]he is  
disabled." *Meanel v. Apfel*, 172 F.3d 1111, 1113 (9<sup>th</sup> Cir.  
1999).

15 Thus, in steps one through four of the sequential evaluation,  
16 the burden of proof rests upon the claimant to establish a prima  
17 facie case of entitlement to disability benefits. *Rhinehart v.*  
18 *Finch*, 438 F.2d 920, 921 (9<sup>th</sup> Cir. 1971). This burden is met once a  
19 claimant establishes that a medically determinable physical or  
20 mental impairment prevents him from engaging in his previous  
21 occupation. 20 C.F.R. §§ 404.1520(a), 416.920(a). "This requires  
22 the presentation of 'complete and detailed objective medical reports  
23 of his condition from licensed medical professionals.'" *Meanel*, 172  
24 F.3d at 1113.

25 If a claimant cannot do his past relevant work, the ALJ  
26 proceeds to step five, and the burden shifts to the Commissioner to  
27 show that (1) the claimant can make an adjustment to other work; and  
28

1 (2) specific jobs exist in the national economy which claimant can  
2 perform. 20 C.F.R. §§ 404.1520(a)(4)(v), 416.920(a)(4)(v); *Kail v.*  
3 *Heckler*, 722 F.2d 1496, 1497-98 (9<sup>th</sup> Cir. 1984).

#### 4 ISSUES

5 The question is whether the ALJ's decision is supported by  
6 substantial evidence and free of legal error. Plaintiff argues the  
7 ALJ erred when he: (1) found no severe impairment at step two; (2)  
8 improperly rejected medical evidence; and (3) failed to consider lay  
9 testimony properly. (ECF No. 11 at 10-11.)

#### 10 DISCUSSION

##### 11 Step Two: Medically Determinable Impairment Requirement

12 To be entitled to a period of disability and receive disability  
13 benefits under Title II of the Social Security Act, individuals who  
14 file for benefits after the expiration of their insured status,  
15 must establish disability on or before the date their insured status  
16 expires. *Flaten v. Secretary of Health and Human Services*, 44 F.3d  
17 1453, 1461-62 (9<sup>th</sup> Cir. 1995). An individual can only be found  
18 disabled if he is unable to do substantial gainful activity "by  
19 reason of any medically determinable physical or mental impairment  
20 which can be expect to result in death or which has lasted or can be  
21 expected to last for a continuous period of not less than 12  
22 months." 20 C.F.R. § 404.1508, .1527. At step two of the  
23 sequential evaluation, the claimant has the burden to present  
24 evidence sufficient to establish a "severe" impairment, i.e., one  
25 that significantly limits [his] physical or mental ability to do  
26 basic work activities." 20 C.F.R. § 404.1520(c). To satisfy step  
27 two's requirement of a severe impairment, the claimant must prove  
28

1 the existence of a physical or mental impairment by providing  
2 objective medical evidence consisting of signs, symptoms, and  
3 laboratory findings; the claimant's own statement of symptoms alone  
4 will not suffice. 20 C.F.R. § 404.1528(a). An impairment must  
5 result from "anatomical, physiological or psychological  
6 abnormalities" which can be shown by "medically acceptable clinical  
7 and laboratory diagnostic techniques." 20 C.F.R. § 404.1528(b).  
8 "No symptom or combination of symptoms can be the basis for a  
9 finding of disability, no matter how genuine the individual's  
10 complaints may appear to be." *Social Security Ruling (SSR) 96-4p*;  
11 *see also SSR 85-28.*<sup>1</sup> If there is no showing of a medically  
12 determinable impairment, a claimant must be found "not disabled" at  
13 step two. *Id.*

14 Regulations governing these disability proceedings also require  
15 a claimant to present evidence that his severe impairment will  
16 result in death or meets the "duration requirement," that is, it has  
17 or is expected to last for a continuous period of at least twelve  
18 months. 20 C.F.R. §§ 404.1520(a)(4)(ii), 404.1509. Thus, if the  
19 Commissioner finds the claimant does not have a severe medically

---

20  
21 <sup>1</sup> Social Security Rulings are issued to clarify the  
22 Commissioner's regulations and policy. They are not published in  
23 the federal register and do not have the force of law. However,  
24 "deference" is given to the Commissioner's interpretation of its  
25 regulations. *Bunnell v. Sullivan*, 947 F.2d 341, at 346 n.3 (9th  
26 Cir. 1991). The Supreme Court upheld the validity of the  
27 Commissioner's severity regulation, as clarified in *SSR 85-28*, in  
28 *Bowen v. Yuckert*, 482 U.S. 137, 153-154 (1987).

1 determinable physical or mental impairment that meets the duration  
2 requirement, a finding of not disabled is warranted at step two, and  
3 the sequential evaluation is ended.

4 As noted above, Plaintiff is claiming disability between 1968  
5 and June 30, 1977, the date his insured status for DIB purposes  
6 expired. The earliest medical evidence submitted by Plaintiff is  
7 from 2006. (Tr. 226-293.) ALJ Chester summarized the medical  
8 evidence presented and concluded the record included "no medical  
9 signs or laboratory findings to substantiate the existence of a  
10 medically determinable impairment." He specifically noted that  
11 psychological evaluations relied upon by Plaintiff related to "more  
12 than 10 years after his date of last insured." (Tr. 18-19.) These  
13 findings are supported by the record in its entirety.

14 Referencing a psychological evaluation completed by Rob Neils,  
15 Ph.D., in January 2008, the ALJ fully explained that although PTSD  
16 and major depression were diagnosed, the diagnoses were based on  
17 Plaintiff's own statements, there were no diagnostic findings made  
18 during the pertinent time to establish these conditions existed  
19 before his date of last insured, and there was no evidence that the  
20 impairments were "disabling in character, on or before his date of  
21 last insured." (Tr. 19, 303-310, 343-344.) Unexplained medical  
22 conclusions that are unsupported by objective tests and diagnostic  
23 techniques are properly rejected by the ALJ. *Tonapetyan v. Halter*,  
24 242 F.3d 1144, 1149 (9<sup>th</sup> Cir. 2001). Further, the ALJ did not err in  
25 disregarding after-the-fact psychiatric diagnoses that are not  
26 pertinent to the period at issue. *Vincent v. Heckler*, 739 F.2d  
27 1393, 1394-95 (9<sup>th</sup> Cir. 1984) (ALJ must explain rejection of  
28

1 "significant probative evidence" only). It is also noted that  
2 Plaintiff concedes in his opening brief that "none of the [medical]  
3 evidence is dated prior to Mr. Campbell's date of last insured of  
4 June 30, 1977." (ECF No. 11 at 6.) This stipulated fact is  
5 sufficient to support a finding that Plaintiff did not meet his step  
6 two burden to provide relevant medical evidence of a medically  
7 determinable impairment. 20 C.F.R. § 404.1508; *Ukolov v. Barnhart*,  
8 420, F.3d, 1002, 1005 (9<sup>th</sup> Cir. 2005); SSR 96-4p (no basis for  
9 disability exists without relevant medical evidence demonstrating  
10 the existence of a medically determinable impairment).

11 Plaintiff appears to argue that his hearing testimony and self-  
12 reported symptoms in the record are sufficient to establish onset  
13 and duration of disability during the period of insured status.  
14 (ECF No. 11 at 9.) This argument is unsupported by legal authority  
15 and contradicted by Plaintiff's hearing testimony. As found by the  
16 ALJ, Plaintiff testified he "did not realize that he had any  
17 problems until about 5 years ago." (Tr. 19, 32-44.) Even assuming  
18 Plaintiff's statements are credible, and he was unable to sustain  
19 work after he left the military, there is no evidence to support a  
20 finding that his inability to hold a job during his period of  
21 insured status was due to a medically determinable impairment.  
22 Further, as noted by the ALJ, at the hearing, Plaintiff did not  
23 allege symptoms of PTSD (such as nightmares or intrusive  
24 recollections of traumatic events during the relevant time) or  
25 depression during the relevant period. The ALJ also references  
26 Plaintiff's testimony that he was able to earn a Bachelor's degree  
27 and a Master's degree in the years after he left the military,



1 testimony that is inconsistent with Plaintiff's allegations of  
2 inability to "follow through" with work tasks. (*Id.*)

3 Plaintiff also argues that statements from friends and  
4 relatives indicate he was having problems "well before his dated  
5 last insured." (ECF No. 14 at 3.) However, information from non-  
6 medical sources, such as parents, caregivers, siblings, friends and  
7 employers, can neither establish the existence of a medically  
8 determinable impairment, nor establish disability absent  
9 corroborating competent medical evidence. 20 C.F.R. § 404.1513(d);  
10 *Nguyen v. Chater*, 100 F.3d 1462, 1467 (9<sup>th</sup> Cir. 1996); SSR 06-03p.  
11 Although the ALJ is required to consider observations by non-medical  
12 sources during the sequential evaluation process, at step two,  
13 evidence of the limiting effects of symptoms is not probative unless  
14 a medically determinable impairment meeting the duration requirement  
15 is clearly established by the medical evidence. 20 C.F.R. §§  
16 404.1513 (a) and (d), .1520(a)(4)(ii); SSR 85-28. Because the  
17 medical evidence in this case does not establish an impairment  
18 during the relevant time, and the sequential process ended at step  
19 two, ALJ Chester was not required to discuss evidence from  
20 Plaintiff's friends and relatives.

#### 21 CONCLUSION

22 The ALJ's denial of disability benefits at step two is  
23 supported by substantial evidence and free of legal error. The  
24 record is devoid of objective medical evidence to establish that  
25 between January 1, 1968, and June 30, 1977, Plaintiff had a  
26 medically determinable impairment that met the duration requirement  
27 and had more than minimal effect on his ability to work. Plaintiff  
28

1 has failed to meet his step two burden. The ALJ properly  
2 discontinued the sequential evaluation at step two. 20 C.F.R. §§  
3 404.1508, .1520. Accordingly,

4 **IT IS ORDERED:**

5 1. Plaintiff's Motion for Summary Judgment (**ECF No. 10**) is  
6 **DENIED;**

7 2. Defendant's Motion for Summary Judgment (**ECF No. 12**) is  
8 **GRANTED;**

9 The District Court Executive is directed to file this Order and  
10 provide a copy to counsel for Plaintiff and Defendant. The file  
11 shall be closed and judgment entered for Defendant.

12 DATED October 31, 2011.

13  
14 S/ CYNTHIA IMBROGNO  
15 UNITED STATES MAGISTRATE JUDGE  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28